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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re D.H., a Person Coming Under the Juvenile Court Law.	B260772
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. LUZ O., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK06811)

APPEAL from orders of the Superior Court of Los Angeles County. Marguerite Downing, Judge. Affirmed.

Christy C. Peterson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Luz O. (mother) appeals from juvenile court jurisdiction and disposition orders. Mother contends the orders were not supported by substantial evidence. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

The family first came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on June 21, 2014. A law enforcement officer observed mother standing in the middle of a busy street. She was gesturing and displaying strange behavior. Although eight-year-old D.H. was standing on the sidewalk, mother returned to the sidewalk and walked him into the middle of the street. Mother and D.H. were both barefoot. Motorists honked at them. D.H. feared mother would be run over because "cars were coming fast." Mother was placed on a hold pursuant to Welfare and Institutions Code section 5150. Mother and father were never married and lived apart, without any formal custody order. DCFS released D.H. to father.

Father told DCFS mother and D.H. lived with the maternal grandparents. Father had not previously been concerned about mother's ability to care for D.H. Yet, father indicated mother smoked marijuana in front of D.H. and was obsessed with being famous. D.H. told DCFS the June 21 incident was the first time mother had done anything to make him feel scared or unsafe. However, he also reported that mother smoked. On one occasion, mother smoked "sticks" in the car, with the windows rolled up, while D.H. was in the back seat. D.H. asked mother to stop when the car began to "smell bad." Mother stopped. Father referred to this as "hot boxing."

When interviewed, mother explained she had been diagnosed with depression and anxiety. Two weeks before the June 21 incident, she had stopped taking her prescription psychotropic medication. She felt she no longer needed medication because she was happy and had "found God." She also felt the medication was "just 'blocking the pain and stress' and 'was making [her] fall asleep.'" On the day of the incident, she and D.H. left the house without shoes because they were only walking to the corner for a hamburger. As they were walking, mother felt a "strong presence and knew God was walking down the sidewalk" with them. Mother walked into the street "and felt as

though she needed to alert everyone that was living in sin, of God's word." Mother denied that she had placed D.H. in danger or that she had carried him into traffic with her. She believed a higher power led her into the street. She denied ever experiencing auditory or visual hallucinations. When asked if she would begin taking her medication again, mother answered "that although she did not need the medication because she was 'fine,' she would take the medication for her son."

Mother admitted using marijuana, but she presented DCFS with a current medical marijuana card. Mother reportedly used medical marijuana for anxiety and back pain. She denied being under the influence during the traffic incident. She also denied "hot boxing" with D.H. in the car. She admitted smoking marijuana when she took D.H. to a local skate park, but she would sit at a distance where she could still see D.H. She asserted D.H. did not know she smoked at those times. Mother told D.H. she is "famous because she takes drugs."[1] D.H. said mother told him she "takes drugs 'so she can get patience and not bully [him].' "

Mother told DCFS she believes D.H. is depressed because she "[sees] it in his eyes" and "feels it in her heart." She therefore had purchased homeopathic drops for him on the internet for hyperactivity or inattentiveness and seasonal depression. D.H. had not been diagnosed with depression or any attention deficit disorder. D.H. told a social worker mother gave him drops every day; she told him the drops would make him feel happy. D.H. said the drops only made him feel tired.

According to D.H., mother took care of him, played sports with him, and took him to the skate park and his weekly baseball games. Mother provided records indicating D.H. was doing well in school and had been seen by a doctor less than a year earlier. The emergency response referral described D.H. as "in good shape," and as a " 'healthy, intelligent smart little guy.' "

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[1] It is unclear if mother was referring to marijuana or her psychotropic medication.

In late June, mother went to the Compton Department of Mental Health for a psychiatric assessment. She told a DCFS social worker she did not feel she was given sufficient time to be assessed and would not return. A department supervisor informed the social worker mother did not meet the criteria for hospitalization, but "no reference was made regarding whether mother required mental health services (counseling, etc.)." Mother had previously been discharged from an urgent care center with a note indicating she had agreed to resume her psychotropic medication.

At an early July 2014 Child and Family Team meeting, mother and father agreed to participate in voluntary services. Mother acknowledged the June incident was the result of her stopping her psychotropic medication. Father indicated he would seek full custody of D.H. in family court. In late July, the family law court denied father's request for a temporary emergency custody order. The court set mediation and future court dates. Following the denial of father's request, mother demanded that father return D.H. to her custody. She rejected father's assertion that they were to share custody. When a social worker arrived at father's house, mother was sitting on the curb outside the home. Mother stated she had custody of O.H. and things "need to go back to the way they were." She demanded that D.H. spend three and a half days of the week with her. DCFS deemed the voluntary family reunification contract to be terminated due to mother's demand for a shared custody arrangement. DCFS then procured a removal order. The juvenile court detained D.H. from mother in August 2014.

DCFS filed a dependency petition alleging mother had a history of mental and emotional problems, she was involuntary hospitalized, and she failed to regularly take psychotropic medication as prescribed. The petition alleged mother's mental and emotional problems rendered her unable to provide regular care for D.H. and endangered him. The petition specifically identified the June 21 incident and mother's behavior as creating a dangerous situation and detrimental home environment. The petition further alleged mother had a history of substance abuse and currently abuses marijuana, mother used marijuana while D.H. was in her care, and mother's substance abuse placed D.H. at risk of physical harm and damage.

In September 2014, mother told DCFS she was preaching on the street, barefoot, during the June incident. She remarked: " 'I guess if I would have been wearing shoes it wouldn't be considered crazy. Cuz there is a guy down the street that does it all the time. It's okay for him but not for me as I was not wearing shoes.' " She denied that D.H. was ever in the street. She stated the only logical explanation for her "bizarre" behavior was that she stopped taking her medication and it caused her confusion. She had stopped taking it because she was staying home, spending time with D.H., and having so much fun with him that she thought she was "fixed." The social worker reported: "[Mother] does not appear to understand the concept of mental health, her own diagnosis of depression and anxiety as she continued to [stress to the social worker] that she was not 'crazy' and did not need mental health services."

Mother denied having a substance abuse problem. She used marijuana two to three times a month, and usually smoked at a park while D.H. was at home with her parents. She denied ever smoking while D.H. was in the car. However, she was willing to explore other methods to control her pain and said she would stop smoking marijuana. Mother explained she gave D.H. the homeopathic drops after conducting an online search and reading testimonials. She decided to give D.H. the drops to address behavior issues and D.H.'s depression. She felt the drops made a difference. She stopped giving them to D.H. at DCFS's request, although she informed the social worker that D.H. had recently asked for them, reinforcing mother's belief that D.H. is depressed.

Mother testified at the November 25, 2014 jurisdiction hearing. She described the June incident as an "episode of confusion." She admitted she had discontinued her medication on her own because she no longer felt depressed. After the incident she spoke to her doctor. He told her stopping the medication could cause such episodes of confusion. Mother indicated she planned to continue taking her medication every day, and knew that she needed to discuss any changes to her depression therapy with her doctor. Mother was enrolled in parenting classes and had been enrolled in individual counseling since November 1.

The juvenile court sustained the petition and declared D.H. a dependent of the court under Welfare and Institutions Code section 300, subdivision (b).[2] The court further found returning D.H. to mother's physical custody would create a substantial risk of detriment to D.H.'s safety, protection, and physical and emotional well-being. The court ordered mother to have monitored visits; the court gave DCFS discretion to liberalize visitation. Mother timely appealed.

DISCUSSION

I. Substantial Evidence Supported the Jurisdictional Order

Mother contends the evidence was insufficient to support the juvenile court order asserting dependency jurisdiction over D.H.[3] Mother contends neither her mental health nor her marijuana use caused D.H. serious physical harm or illness, as required for jurisdiction under section 300, subdivision (b). We disagree. There was substantial evidence that mother's conduct placed D.H. at risk of serious physical harm or illness.

"We affirm a juvenile court's jurisdictional and dispositional findings if they are supported by substantial evidence. [Citation.] 'In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.' [Citation.]" (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1103.)

"Section 300, subdivision (b) provides a basis for assertion of dependency jurisdiction if '[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . .' " "A jurisdictional finding

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[2] All further statutory references are to the Welfare and Institutions Code.

[3] Mother has requested that we take judicial notice of juvenile court post-judgment orders issued while this appeal was pending. Mother has not offered any argument to explain why the orders are relevant to this appeal. (Cal. Rules of Court, rule 8.252(a)(2)(A) [motion for judicial notice must state why the matters to be noticed is relevant to the appeal].) We deny mother's request.

under section 300, subdivision (b), requires: ' "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the child, or a 'substantial risk' of such harm or illness." [Citation.]' [Citations.] The third element 'effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).' [Citation.]" ' [Citation.]" (*In re Jesus M.* (2015) 235 Cal.App.4th 104, 111.)

In this case, mother's conduct related to her mental health, and her conduct related to her use of marijuana, had already placed D.H. at substantial risk of serious physical harm. Mother, after not feeling depressed, unilaterally ceased the medication prescribed to treat her mental health issues. She then suffered an episode in which she took D.H. outside for a meal while both were in their bare feet. Mother walked into the middle of a busy street; she eventually led D.H. into the street with her. D.H. feared mother would be hit by a car. For months after the incident, mother's description of what happened did not appear to acknowledge the extreme dangerousness of her behavior, or the risk of harm to D.H. Mother first explained she had been led by a higher power into the street; she later suggested that, had she been wearing shoes, the event would not have been interpreted as "crazy." Mother's explanation for abruptly ceasing her medication was the improvement in her mental state; she no longer felt she needed it. Mother's decision to stop taking her medication caused her to place D.H. at substantial risk of serious physical harm.

Moreover, mother's conduct placed D.H. at substantial risk of serious physical harm or illness when she smoked marijuana, with the windows rolled up, while D.H. was in the car with her.[4] While mother's legitimate use of medical marijuana, on its own, may not have supported a jurisdictional finding (*In re Drake M.* (2012) 211 Cal.App.4th 754, 769), that was not the issue in this case. Here, there was evidence mother was

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[4] Mother denied "hot boxing" with D.H. in the car. However, D.H. told both father and a social worker about the incident. On appeal, we resolve all conflicts in the evidence in favor of the juvenile court orders. (*In re I.R.* (2014) 226 Cal.App.4th 201, 211.)

smoking the drug not only in D.H.'s presence, but in a manner in which he could not help but also inhale secondhand, potentially intoxicating, marijuana smoke. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451-452 [risk to children of negative effects of secondhand marijuana smoke].) This placed D.H. at substantial risk of serious physical harm or illness.

When considered as a whole, the evidence indicated mother had a pattern of exposing D.H. to substantial risk of serious physical harm or illness. While the June incident may have been caused by mother stopping her medication, mother's choices that led to the June incident and the "hot boxing" incident demonstrated, at a minimum, a significant lack of judgment. This lack of judgment led mother to engage in behaviors that posed a risk of almost certain serious harm to D.H. Further, unlike the parents in *In re J.N.* (2010) 181 Cal.App.4th 1010, who placed their children in danger with a single instance of driving under the influence, there was evidence that mother placed D.H. at risk of serious physical harm or illness on more than one occasion. Jurisdiction was not based on a single episode of harmful parental conduct. (*Id.* at p. 1022.)

Substantial evidence supported the juvenile court's order asserting dependency jurisdiction over D.H.

II. The Juvenile Court Did Not Err in Removing D.H. From Mother's Custody or in Ordering Monitored Visits

Under section 361, subdivision (c)(1), "[a] dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody."

Substantial evidence supported a finding that D.H. was at substantial risk of harm if returned home and there were no reasonable means to protect him without removal from mother's custody. (*In re J.C.* (2014) 233 Cal.App.4th 1, 6.) As explained above, mother had at least twice placed D.H. at substantial risk of harm. Mother made comments suggesting she did not view her conduct during the June incident as entirely improper (i.e., it would have been okay had she been wearing shoes). She was taking psychotropic medication again, but had less than one month of individual counseling. As late as September 2014, mother insisted to the social worker that although she was taking medication she did not need mental health services. Despite law enforcement observation that mother had D.H. in the middle of the street with her during the June incident, mother continued to deny D.H. was ever in the street during the incident. Mother had also rejected the voluntary service plan DCFS implemented soon after the June incident. She contends on appeal the maternal grandparents could provide additional support to prevent harm to D.H. However, mother and D.H. were living with the maternal grandparents before the dependency petition was filed. The maternal grandparents were involved in caring for D.H. That arrangement had not prevented the June incident, the "hot box" incident, or mother from smoking marijuana in D.H.'s presence.

" 'A removal order is proper if based on proof of a parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." [Citation.] The court may consider a parent's past conduct as well as present circumstances.' [Citation.]" (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.) Substantial evidence supported the juvenile court's removal order.

Mother also contends the juvenile court committed prejudicial error in failing to follow procedures set forth in section 361, subdivision (d): "The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . . The court shall state the facts on which the decision to remove the minor is based." It is not clear if the court's statements preceding the ruling sustaining the allegations of the petition were intended to also provide the factual basis for the removal finding. However, even if the court erred in failing to make the required factual statements under section 361, subdivision (d), we would find the error harmless. It is not reasonably probable any such findings would have been in favor of mother's continued custody of D.H. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.) The juvenile court's disposition order was supported by clear and convincing evidence. As explained above, there was evidence of the risk of harm to D.H. from mother's conduct at the time of the jurisdiction hearing. DCFS documented the agency's efforts to prevent removal, which included the voluntary services contract mother eventually rejected. And, as noted above, the June incident was precipitated by mother's conclusion that she no longer needed medication, a view she appeared to still hold, despite her agreement to continue taking the medication. Living with the maternal grandparents had not prevented the prior conduct that placed D.H. at risk of harm. This is not a case in which "[a]mple evidence existed of 'reasonable means' " to protect D.H. while he continued to live with mother. (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 810.)

Similarly, the juvenile court did not abuse its discretion in ordering that mother's visits be monitored, but also affording DCFS the discretion to liberalize visitation. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.) Mother, without any apparent warning, had engaged in conduct that placed D.H. in serious danger. While she was taking medication and testified she would continue to do so, she had also told a social worker she did not believe she needed mental health services. She indicated she would take the medication for her son, although she did not think it was necessary. On these

facts, the juvenile court's visitation order was not arbitrary, capricious, or patently absurd. (*Ibid.*)

DISPOSITION

The juvenile court orders are affirmed.

BIGELOW, P.J.

We concur:

FLIER, J.

OHTA, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.